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Service of Process in Diversity Cases

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FEBRUARY—MARCH 1961

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Service of Process in Diversity Cases

IN 1960, the United States Court of Appeals, Second Circuit, in *Jaftex Corp. v. Randolph Mills*,[1] declared that "the question whether a foreign corporation is *present* in a district to permit of service of process upon it is one of federal law governing the procedure of the United States courts and is to be determined accordingly." The decision is particularly interesting in the light of the doctrine of *Erie R. Co. v. Tompkins*,[2] and because of, in the words of the court, "the very great confusion attending" the subject.

In 1938, The United States Supreme Court, in *Erie R. Co. v. Tompkins*, declared that, in federal diversity cases, "except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State . . . There is no federal general common law." The Supreme Court abandoned, in this landmark decision, the doctrine of a general common law existing apart from the common law of the states, a doctrine which had been applied for nearly a century.[3]

The *Erie* case involved the law of negligence. The defendant railroad corporation had contended that its duty to plaintiff, injured while walking along a path parallel to the tracks, should be determined in accordance with Pennsylvania law; that under the law of Pennsylvania, as declared by its highest court, persons who used pathways along a railroad right of way were deemed trespassers; and that the railroad was not liable for injuries to undiscovered trespassers unless its negligence was wanton or wilful. Plaintiff contended that, since there was no statute of the state on the subject, the railroad's duty and liability were to be determined in federal courts as a matter of general law. The court held that the law to be applied was the law of the state, and that there was no federal general common law.

It was not until 1949, when the Supreme Court handed down its decision in *Woods v. Interstate Realty Co.*,[4] that the *Erie* doctrine was applied to the use of the federal courts by unlicensed foreign corporations.[5] Such a corporation had brought suit in the District Court for Mississippi on the grounds of diversity of citizenship. The corporation was doing business in Mississippi and was barred by statute from suing in the state courts by reason of its failure to qualify. The United States Supreme Court held that, under the doctrine of *Erie R. Co. v. Tompkins*, the unlicensed foreign corporation was barred as well from bringing suit in the federal court sitting in that state. "The policy of *Erie R. Co. v. Tompkins* precluded maintenance in the federal Court in diversity cases of suits to which the State had closed its courts."

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[1] CCH 4 NEW YORK TAX CASES ¶ 98-287, August 22, 1960.
[2] 58 S. Ct. 817, 304 U. S. 64 (1938).
[3] Since *Swift v. Tyson*, 16 Pet. 1 (1842).
[4] 69 S. Ct. 1235, 337 U. S. 535 (1949).
[5] Cases in which the United States Supreme Court has required federal courts in diversity cases to follow local law under the *Erie* doctrine include: *Guaranty Trust Co. v. York*, 326 U. S. 99 (statute of limitations of state); *Cities Service Co. v. Dunlap*, 308 U. S. 208 (burden of proof); *Palmer v. Hoffman*, 308 U. S. 109 (contributory negligence); *Klaxon Co. v. Stentor Co.*, 313 U. S. 487 (conflict of laws); *West v. American Tel. & T. Co.*, 311 U. S. 223 (accrual of cause of action).

The application of the *Erie* principle to the particular problem involved in *Jaftex Corporation v. Randolph Mills*, i.e., whether an unlicensed foreign corporation may be doing sufficient business in a state to subject it to suit in a federal court sitting in the state when it is not sufficiently active to subject it to suit in the state courts, has not been passed upon by the Supreme Court of the United States. The original *Jaftex* diversity action was brought by plaintiffs, citizens of Maryland, against defendant New York corporations seeking damages for personal injuries claimed to have been sustained by the infant plaintiff when a portion of a pajama outfit she was wearing "went up in flames." It was alleged that the pajamas were made from fabrics manufactured by defendant Jaftex. Jaftex thereafter sought to implead the ultimate manufacturer, Randolph Mills, a North Carolina corporation, claiming that by reason of the latter's negligence and on its sale of the cloth to Jaftex it became liable over for any amounts which Jaftex might be required to pay plaintiffs. Service on Randolph Mills was made on an officer of its "selling agent" in New York. The district court granted Randolph Mills' motion to vacate the service and dismiss the third-party complaint,* holding that although Randolph Mills, through its "selling agent," was doing business in New York to such an extent that there could be no doubt as to the validity of the service under federal law, it was not sufficiently active to be subject to suit under New York law, and under the doctrine of *Erie*, the state law must be applied.

On appeal, the United States Court of Appeals, Second Circuit, concluded that the service was valid under either New York or federal law, citing the fact that the selling agent carried on activities in New York for Randolph Mills regularly and continuously for more than six years. "It took orders and processed them for Randolph Mills; it received and acted upon, by investigation, response, and otherwise, all complaints; and it provided the money at once for its principal by factorizing the contracts through its own subsidiary. Moreover, the claim against Randolph Mills arises out of these very activities."

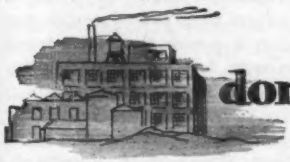
Although the Circuit Court of Appeals found that the service was valid under both New York and federal law, it nevertheless addressed itself to the "question of governing power," pointing out, as noted above, that great confusion existed on this question, particularly in the Southern District of New York. Observing that the Supreme Court has not passed on the application of the *Erie* principle to the question of service of process on foreign corporations in diversity cases, Circuit Judge Clark noted that this question was a part of the make-up of a federal court and was not lightly to be superseded. Although it was the settled policy that federal courts should apply state substantive law in diversity cases, this did not mean, the Court felt, that in such cases federal courts were required to apply state law to the question involved here. Judge Clark observed that "the problem is obviously complex" and raises various questions such as "the real meaning and purpose of the state policy with respect to foreign corporations, which may range from conditions imposed and enforceable only in state courts to burdens upon doing business which are properly applied also in a federal court, as in *Woods v. Interstate Realty Co.*, 337 U. S. 535."

The court concluded that there was nothing in this case to offend New York policy, and distinguished *Woods v. Interstate Realty Co.* on the basis that there was there "a clear and precise state policy" which "would have been frustrated

* *Shawe v. Wendy Wilson, Inc.*, CCH 4 NEW YORK TAX CASES ¶ 98-181, 171 F. Supp. 117.

by permitting suit in the federal forum." "Hence our conclusion is that the question whether a foreign corporation is *present* in a district to permit of service of process upon it is one of federal law governing the procedure of the United States courts and is to be determined accordingly."

Whether *Jaftex* will be taken to the United States Supreme Court is not yet known. The division of opinion on this question, however, makes such an appeal not at all unlikely. And in view of the broad language in *Erie R. Co. v. Tompkins* to the effect that there is no federal general common law, and the language in *Woods v. Interstate Realty Co.* that "the policy of *Erie R. Co. v. Tompkins* precluded maintenance in the federal court in diversity cases of suits to which the state had closed its courts," the outcome of such an appeal would be awaited with interest.



domestic corporations

TENNESSEE

Corporation whose charter was revoked for failure to file and pay certain reports and taxes held not entitled to maintain suit seven years after forfeiture.

Plaintiff corporation's charter had been revoked by the state, for failure to file and pay certain reports and taxes, some seven years prior to a fire which destroyed personal property of the corporation stored in a building rented to defendant. Plaintiff corporation sued for damages, alleging that the fire was the result of the negligence of defendant's employees, and this was an appeal from a judgment of the Circuit Court dismissing the suit.

The Supreme Court of Tennessee stated that the question involved was whether the plaintiff corporation had a sufficient corporate existence at the time of the fire, and a sufficient interest in the property, to entitle it to maintain the action. The court concluded that, after the revocation of its charter, the plaintiff corporation "had only a reasonable time to wind up the present affairs and business of the corporation in accordance with the applicable statutes, and that under the facts as stipulated here the seven years time elapsed in this case under these facts is not reasonable and not within the contemplation of the statutes." The court ruled that, at the time the suit was instituted, the plaintiff corporation had no corporate existence sufficient to entitle it to maintain the suit and had no interest in the property which was the subject of the suit so as to entitle it to maintain the action for damages to the property, which, upon forfeiture, had passed to the sole stockholder of the corporation.

Jesse A. Bland Co. v. Knox Concrete Products, Inc., 338 S. W. 2d 605. Ely & Ely, of Knoxville, for plaintiff in error. Hodges, Doughty & Carson, Donaldson, Montgomery & Kennerly, of Konxville, for defendant in error.

foreign corporations

FLORIDA

Foreign corporation held not doing business so as to be subject to service of process where its agents merely performed promotional services, forwarding all orders to defendant's home office.

This was an appeal from a dismissal by the trial court of a complaint for lack of jurisdiction over the defendant foreign corporation. The trial judge concluded that "the substance of the testimony was that the agents of the defendant were employed solely to go into drug stores, doctors' offices and hospitals, and talk to them favorably about the defendant's products. If orders were tendered, these agents would forward them to defendant's home office."

The District Court of Appeal of Florida, Third District, concluded that the trial court's finding that the defendant was not transacting business in Florida so as to be subject to service of process was "based upon a reasonable interpretation of the testimony before it," and the judgment of dismissal was affirmed.

Zirin v. Charles Pfizer & Co., 121 So. 2d 694. Marchant & Perkins, of Miami, for appellant. Theobald H. Engelhardt, Jr., and Cheren & Golden, of Miami, for appellee.

MINNESOTA

Service on unlicensed foreign corporation by service on Secretary of State, under statute permitting such service where corporation commits tort in part in state, sustained where injury occurred in state.

This was an action against an unlicensed foreign corporation and others for negligence resulting in injuries. The defendant unlicensed foreign corporation was in the business of selling hydrofluosilicic acid to the fermentation industry. The acid was put into containers at a plant in New York and shipped from there to customers in other states. Plaintiff, a truck driver, was injured while hauling and unloading the product in Minnesota, allegedly as a result of defendant's negligence in placing the acid in a defective container. Service was made on defendant by serving the Secretary of State of Minnesota under M.S.A. Section 303.13, subd. 1(3), which provides for such service on a foreign corporation in proceedings growing out of the commission by the corporation of a tort in whole or in part in Minnesota. From an order denying its motion to quash service on the ground of lack of jurisdiction, the corporation appealed.

The Minnesota Supreme Court, affirming the judgment below, noted that the last event essential to the tort liability of the corporation, the injury of the plaintiff, occurred in Minnesota. Declaring that the place of the wrong is the place where the legal injury occurs, the court concluded that "if the allegations of the complaint are established it would follow that defendant has committed a tort within the state, and hence under Section 303.13, subd. 1(3), may be said to have been doing business here so as to be subject to" the jurisdiction of the Minnesota courts.

Atkins v. Jones & Laughlin Steel Corp., 104 N. W. 2d 888. Feagre & Benson, Paul J. McGough, Wright W. Brooks, of Minneapolis, for appellant. Roger S. Rutchick, Donald E. M. Rockne, of St. Paul, for respondent Atkins. Thomas J. Burke, of St. Paul, Tyrrell, Jardine, Logan & O'Brien, Sullivan, Stringer, Donnelly & Sharood, of St. Paul, for other respondents.

NEW JERSEY

Unlicensed foreign corporation held subject to service of process by registered mail where it had substantial contact with the state through companies which sold and tested its product, the cause of action arose in the state, and the witnesses were in the state.

The question here was whether defendant unlicensed foreign corporation was "doing business" in New Jersey so as to be amenable to service of process. Defendant had been incorporated in New Jersey in 1946 and did business there until 1952, when its charter was forfeited for nonpayment of taxes. At the time of this action, defendant was a Maryland corporation. Defendant manufactured ladders, one of which was purchased by plaintiff from a chain store in New Jersey, and allegedly caused his injury. The ladders bore labels stating that defendant was the manufacturer and that they had been tested by a testing company.

The Superior Court of New Jersey, Law Division, observed that although defendant was a foreign corporation, "its genesis was in the State of New Jersey." The court pointed out that defendant had contact with a chain store which was authorized to do business in New Jersey, and substantial contact in the state when it entered into an agreement with the testing company for the purpose of obtaining its approval and seal so that the public would rely upon the reputation and integrity of the testing company. In addition, witnesses as to the defective condition of the ladder, as well as medical, hospital and expert witnesses, were in New Jersey, the cause of action arose in New Jersey, and "it is more desirable and practical to bring all the parties together in one suit and avoid a multiplicity of suits." The court concluded that defendant had sufficient minimum contact with New Jersey so that the maintenance of the suit would not offend "traditional notions of fair play and substantial justice."

Malavasi v. Villavecchia, CCH NEW JERSEY TAX REPORTS ¶ 200-176, 163 A. 2d 214. Abner A. Farber, of Union City, for plaintiff. Erwin E. Field, of Newark, for defendant Villavecchia. E. Lamb, Langan & Blake, of Jersey City, (John L. Milling, appearing) for defendant Lincoln Manufacturing Co., Inc.

PUERTO RICO

Unlicensed foreign corporation held subject to service of process on its employee and on Secretary of State where its activities in Puerto Rico were continuous and exceeded the "minimum contacts" necessary for *in personam* jurisdiction.

Defendant unlicensed foreign corporation moved to dismiss the complaint on the ground that it was not subject to service of process in Puerto Rico. Service on defendant had been attempted by service on one of its employees then at plaintiff's

refinery in Puerto Rico, and by service on the Secretary of State of Puerto Rico. Defendant was engaged in research and development pertaining to catalytic processes in the petro-chemical field; in patenting its inventions; in developing techniques for the commercial utilization of such inventions; in granting licenses to refiners to practice its processes; and in furnishing the necessary process, engineering, designs, plans, specifications and technical information for the utilization of its processes. Defendant carried out many of these activities in Puerto Rico almost continuously during the three years prior to the commencement of this action, including maintaining one or more employees who performed services in Puerto Rico and whose total salaries approximated $100,000 per year.

The United States District Court, D. Puerto Rico, San Juan Division, found that "defendant's activities in Puerto Rico throughout the period here involved far exceeded the 'minimum contacts' which International Shoe (*International Shoe Co. v. State of Washington*, 1945, 326 U. S. 310, 66 S. Ct. 154, 90 L. Ed. 95) indicated to be required for *in personam* jurisdiction. There can be no question that in the constitutional sense defendant was and is subject to the jurisdiction of this Court, by reason of its having been 'doing business' in Puerto Rico since December, 1955." Concluding that both the service on defendant's employee and on the Secretary of State of Puerto Rico were proper, the court denied defendant's motion to dismiss.

Commonwealth Oil Refining Co. v. Houdry Process Corp., 185 F. Supp. 485. Fiddler, Gonzalez, Guillemard & Rodriguez, of San Juan, for plaintiff. Pepper, Hamilton & Scheetz, of Philadelphia, Pa., for defendant.

taxation

GEORGIA

Georgia corporation held not doing business outside Georgia so as to be entitled to apportion its income where its only substantial activity outside the state was through independent contractors.

Taxpayer Georgia corporation filed a petition to recover alleged overpayments of Georgia income tax, alleging, among other things, that it was doing business outside of Georgia so as to be entitled to apportion its income. Taxpayer was in the business of selling peanuts, candies and similar products of its own manufacture and those of other manufacturers. The products were distributed in Georgia and 44 other states through wholesale distributors, who bought the products and resold them to retail dealers. Taxpayer employed eleven district sales managers outside Georgia, each with an assigned territory, to solicit and promote the sale of taxpayer's products.

The Georgia Court of Appeals stated that the question of whether or not the taxpayer was doing business outside Georgia, and so entitled to apportion its income, turned on whether these eleven district sales managers were employees of the taxpayer or independent contractors

wholly free from the control of the taxpayer. "This is so because the only activity of the plaintiff outside this State, as shown by the stipulation of facts, aside from the activities of these district sales managers, is the delivery of some of its merchandise in its own trucks. This activity, standing alone, would be insufficient to authorize a finding that the plaintiff was engaged in business outside the State of Georgia." The court concluded that, since the district sales managers were free to sell and promote the sale of products of other manufacturers, to employ their own initiative, independent judgment, methods and procedures, hire such assistants and clerical personnel and to discharge such assistants and clerical personnel as and when they saw fit, they were not employees of the taxpayer but were independent contractors conducting a business on their own account. Since the taxpayer was not engaged in "any substantial activity on its own behalf" outside Georgia, "it was not entitled to apportion its income under the provisions of Code Section 92-3113."

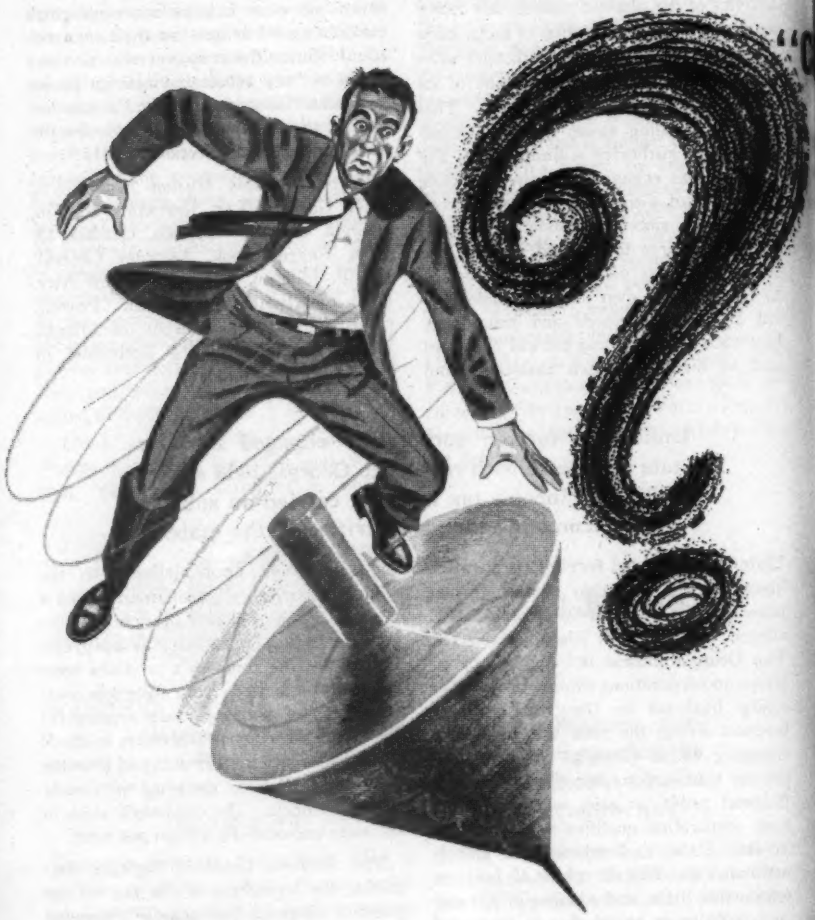
Oxford v. Tom Huston Peanut Co., CCH GEORGIA TAX REPORTS ¶ 200-236, Georgia Court of Appeals, October 13, 1960. Eugene Cook, Attorney General, Ben F. Johnson, Deputy Assistant Atty. Gen., of Atlanta, for plaintiff. Powell, Goldstein, Frazer & Murphy, of Atlanta, Hatcher, Smith, Stubbs & Rothschild, of Columbus, for defendant.

Unlicensed foreign corporation engaged in interstate commerce with respect to Georgia held subject to Georgia income tax where it carried on substantial income-producing activities in the state.

Plaintiff unlicensed foreign corporation instituted this action to recover income taxes for the years 1949, 1950 and 1951 alleged to have been illegally collected. The Georgia income tax applied, by its terms, to corporations owning property or doing business in the state. Doing business within the state was defined as engaging within Georgia "in any activities or transactions for the purpose of financial profit or gain, whether or not such corporation qualifies to do business in this State, and whether or not it maintains an office or place of business within this State, and whether or not any such activity or transaction is connected with interstate or foreign commerce."

Plaintiff's home office or principal place of business was in Ohio, all orders were accepted in Ohio, all products sold to customers in Georgia were shipped by common carrier f.o.b. its plant outside Georgia, and all payments were remitted to Ohio. Title to the products passed to the purchasers upon delivery to the common carrier. Plaintiff maintained a combined regional and branch office in Atlanta with 10 full-time employees. Orders for the company's products were regularly solicited from Georgia customers by the company's sales representatives, who visited such customers to check their needs, encourage orders and promote good will. All credit decisions were made outside Georgia. The company's sales in the state exceeded $4 million per year.

The Supreme Court of Georgia, sustaining the imposition of the tax on the plaintiff, observed that plaintiff "engaged in and carried on substantial income-producing activities or transactions" in Georgia. "The State has exerted its power in relation to opportunities given, to protection afforded, and to benefits conferred including those accorded while its sales representatives were regularly exploiting the markets of this State for the purpose of capturing corporate



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...to arrange for publication and recording where required

...to have forms typed, letters written, checks issued

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profits; and having accepted and utilized those valuable State services, the plaintiff cannot consistently contend or successfully assert under the facts of this case that its property (the taxes collected) has been taken from it in violation of the due-process clause of Georgia's Constitution of 1945." The judgment of the trial court holding that plaintiff was not entitled to recover the taxes paid was affirmed.

Owens-Illinois Glass Co. v. Oxford, CCH GEORGIA TAX REPORTS ¶ 200-231, 116 S. E. 2d 293. E. Smythe Gambrell, Gambrell, Harlan, Russell, Moye & Richardson, W. Glen Harlan, Terry P. McKenna, of Atlanta, for plaintiff in error. Eugene Cook, Atty. Gen., Ben F. Johnson, Deputy Asst. Atty. Gen., Robert W. Goodman, of Atlanta, for defendant in error.

NEW YORK

New York corporation held not to have regular place of business outside state where its only operating assets were textile mill machinery in South Carolina which it leased and stored in South Carolina pending sale.

This was a proceeding to review a determination of the State Tax Commission sustaining franchise tax assessments against a New York corporation for 1952 and 1953. The corporation's only operating assets consisted of textile mill machinery located in South Carolina which it had acquired for resale, pending which sale the machinery was leased to a South Carolina mill which, in addition to payment of rental, stored and took care of that part of the machinery not used by it. The taxpayer corporation brought this proceeding to review a holding of the State Tax Commission to the effect that the taxpayer did not have a "regular place of business outside New York" within the meaning of Sec. 210 of the Tax Law providing that in such case "the business allocation percentage shall be one hundred per cent."

The Supreme Court, Appellate Division, Third Judicial Department, noted that a "regular place of business" was defined by regulation as "any *bona fide* office (other than a statutory office), factory, warehouse, or other space which is regularly used by the taxpayer in carrying on its business." The court concluded that there was little or no support in the lease itself for the taxpayer's claim that the rental was only incidental to the storage arrangement which was a part of the means of selling the machinery, allegedly the taxpayer's principal activity, and that therefore the lessee's factory was "other space . . . regularly used by the taxpayer in carrying on its business." The determination of the Tax Commission was affirmed.

Clairmont Mills, Inc. v. State Tax Commission, CCH NEW YORK TAX REPORTS ¶ 98-301, New York Supreme Court, Appellate Division, Third Judicial Department, November 4, 1960. Willkie, Farr, Gallagher, Walton & Fitzgibbon (Robert B. Hodes and Thomas N. Tarleau, of counsel), Attorneys for Petitioner. Louis J. Lefkowitz, Attorney-General (Edwin R. Oberwager and Paxton Blair, of counsel), Attorney for Respondent.

OREGON

Allocation fraction, used to determine portion of foreign corporation's income subject to tax in Oregon, which included in numerator all of corporation's line-haul miles in Oregon whether intrastate or interstate in character, held proper.

Plaintiff foreign corporation claimed a refund of excise (income) taxes paid for the years 1951 and 1952, and the Oregon State Tax Commission appealed from a judgment awarding the claimed refund. Plaintiff's principal place of business was in California, but it maintained a district headquarters in Oregon, and owned land in Oregon with a value of less than $500. Plaintiff's operations consisted of hauling freight between Portland, Oregon and San Francisco, California and way points. It leased and operated its main Oregon terminal in Portland, and smaller terminals in 6 other cities in Oregon. Its operations in Oregon included both intrastate and interstate hauling. In determining the amount of plaintiff's income properly subject to tax in Oregon, the commission adopted an allocation fraction which consisted of dividing all of plaintiff's line-haul miles in Oregon by the total miles of plaintiff's operations in all states. The plaintiff claimed that the numerator should have included only its line-haul miles in Oregon which were strictly intrastate in character, and should not have included interstate line-haul miles in Oregon.

The Oregon Supreme Court determined that the commission's formula did not subject plaintiff to a greater tax burden than a competitor engaged only in Oregon carriage, did not tax income earned from outside the state, and did not subject plaintiff's Oregon mileage to taxation by any other state in which it operated. The court concluded that "in the absence of the facts which would have established or demonstrated violation of these requirements, we find that the tax did not discriminate against or impede plaintiff's ability to engage in interstate commerce." The judgment of the lower court awarding the refund was reversed.

Oregon-Nevada-California Fast Freight, Inc. v. Stewart, CCH OREGON TAX REPORTS ¶ 200-151, 353 P. 2d 541. Alfred B. Thomas, Assistant Attorney General (Robert Y. Thornton, Attorney General, and Theodore W. de Looze, Assistant Attorney General, on the brief), of Salem, for the Commission. Ferris F. Boothe, of Portland (Black, Kendall & Tremaine, on the brief), for taxpayer. *(Appeal dismissed by the United States Supreme Court for want of a substantial federal question, January 9, 1961; Docket No. 521.)* (See page 75.)

Discussions on Corporation Law

Corporations and the New Federal Diversity Statute: A Denial of Justice, by Robert A. Kessler. 1960 Washington University Law Quarterly, June, 1960, page 239.

A Case Study on Corporate Acquisition, by James E. Gelbert. 30 New York Certified Public Accountant, July, 1960, page 480.

Are Stock Options Getting Out of Hand? by Erwin N. Griswold. Harvard Business Review, November–December, 1960, page 49.

A Symposium on State Taxation of Interstate Commerce. Virginia Law Review, October, 1960.

state legislation

Dominion of Canada — The 1960 Supplementary Budget, submitted to Parliament December 20, makes significant changes in both the income tax and withholding requirements in the Dominion. Budget resolutions are by custom given the effect of law pending passage of the amending legislation, which may not receive Royal Assent for some weeks.

Resolution 1 provides that with respect to income of corporations earned on and after January 1, 1961, the amount of the first bracket of taxable income subject to a tax of 21 per cent be increased from $25,000 to $35,000.

Resolution 3 provides that in order to qualify for the special rate of tax on investment companies, in addition to other requirements, a company must receive a certain percentage of its gross income in the form of dividends from taxable Canadian corporations. The percentages vary in the taxation years 1961, 1962 and 1963.

Resolution 10 imposes a special 15% tax on income earned on and after January 1, 1961, by branches of non-resident corporations carrying on business in Canada.

Resolutions 5 through 9 are designed to bring the principal withholding taxes on interest and dividends received by non-residents from Canadian sources up to a uniform level of 15%.

Michigan — House Bills 1 and 2 of the Second Special Session of 1960 have increased the rate of the sales and use taxes from 3% to 4%, effective January 1, 1961. The increased rate will be reflected for the first time in returns filed on or before February 15, 1961, covering the month of January, 1961.

Nebraska — The voters approved at the November general election and the Governor proclaimed, as of November 28, 1960, an amendment to Article XII of the state constitution permitting the articles of incorporation of Nebraska corporations to provide that preferred stockholders may not have a vote and permitting preferred stock to be of a different par value than other stock of the corporation.

Oklahoma — Oklahoma voters, at the November election, rejected a proposal to authorize the general withholding of state income taxes by employers provided for by Senate Bill 153 of 1959. The law never became operative, but remained suspended pending the outcome of the November referendum.

Quebec — The Tax on Net Revenue was increased from 10% to 12% with respect to a corporation's financial year in progress on January 1, 1961 and each of its subsequent financial years. Proration of the tax is provided where a corporation's fiscal year does not coincide with the calendar year, according to the number of days of the financial year falling in 1960 and 1961. In addition, the provisions dealing with installment payments have been changed to provide for 4 equal installments on the 15th day of the 5th, 8th and 11th months of the financial year and of the second month following the end of such year.

appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ALABAMA. Docket No. 547. *Alabama v. Transcontinental Gas Pipe Line Corp.*, CCH ALABAMA TAX REPORTS ¶ 200-103, 123 So. 2d 172. (The Corporation Journal, August—September 1960, page 11.) Franchise Tax—interstate commerce. **Petition for writ of certiorari filed, November 25, 1960. Certiorari denied, January 9, 1961.**

ALASKA. Docket No. 106. *Arctic Maid v. Territory of Alaska*, CCH ALASKA TAX REPORTS ¶ 200-034, 277 F. 2d 120. (The Corporation Journal, December 1960—January 1961, page 54.) License tax—interstate commerce. **Petition for writ of certiorari filed, May 27, 1960. Certiorari granted, October 10, 1960.** (81 S. Ct. 45)

ARIZONA. Docket No. 168. *State Tax Commission v. The Murray Company of Texas, Inc.*, CCH ARIZONA TAX REPORTS ¶ 200-070, Arizona Supreme Court, March 30, 1960. (The Corporation Journal, December 1960—January 1961, page 54.) Privilege (sales) tax—interstate commerce. **Petition for writ of certiorari filed, June 23, 1960. October 10, 1960:** *"Per Curiam:* The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded for clarification." (81 S. Ct. 53)

NEW JERSEY. Docket No. 203. *Eli Lilly and Company v. Sav-on-Drugs, Inc.*, CCH NEW JERSEY TAX REPORTS ¶ 200-146, 31 N. J. 591, 158 A. 2d 528. (The Corporation Journal, April—May 1960, page 329) ; affirming 57 N. J. Super 291, 154 A. 2d 650. (The Corporation Journal, February—March 1960, page 308.) Doing business—enforcement of contracts. **Appeal filed, June 20, 1960. Jurisdiction noted, October 17, 1960.** (81 S. Ct. 102)

NEW YORK. Docket No. 483. *Pekao Trading Corp. v. Bragalini*, CCH NEW YORK TAX REPORTS ¶ 98-201, 9 A. D. 2d 559, 189 N. Y. S. 2d 241; aff'd without opinion, New York Court of Appeals, June 9, 1960. (The Corporation Journal, August—September 1960, page 14.) Franchise tax—foreign commerce. **Appeal filed, October 13, 1960. December 5, 1960:** *"Per Curiam:* The appeal is dismissed for want of a substantial Federal question." (81 S. Ct. 243)

OREGON. Docket No. 521. *Oregon-Nevada-California Fast Freight, Inc. v. Stewart*, CCH OREGON TAX REPORTS ¶ 200-151, 353 P. 2d 541. (The Corporation Journal, February—March 1961, page 73.) Excise (income) tax—allocation fraction. **Appeal filed, November 7, 1960. January 9, 1961:** *"Per curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question."

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* Data compiled from **CCH U. S.** SUPREME COURT BULLETIN.

regulations and rulings

Connecticut — The new Connecticut Stock Corporation Law became effective January 1, 1961. Under this law the Annual License Fee of $100 required of foreign corporations becomes due on the first day of the calendar month in which falls the anniversary of the day when the corporation qualified to do business in Connecticut. The Secretary of State of Connecticut is mailing, with the notice calling attention to the due date of the Annual License Fee, a letter stating that foreign corporations qualified before January 1, 1961, are required to file an Application for Certificate of Authority, enclosed with the notice. The filing fee is $20.

Delaware — Even though not spelled out in the instructions and the law as enacted, a corporate taxpayer on an accrual accounting basis is authorized to include wages earned as well as paid in both the numerator and denominator of the wage factor of the income tax apportionment formula. (Letter of the State Tax Department, CCH DELAWARE TAX REPORTS ¶ 10-850.55)

North Carolina — A foreign company which has no place of business in North Carolina and whose products are sold only through independent contractors who are not subject to control or direction by the company must collect the North Carolina use tax. The ruling of the United States Supreme Court in the Scripto, Inc. case, which upheld the Florida statute requiring the collection of the use tax by an interstate seller, is controlling since North Carolina's statutes are similar to Florida's. (Opinion of the Attorney General, CCH NORTH CAROLINA TAX REPORTS ¶ 200-656)

A domestic corporation becomes subject to the franchise tax at the time it is incorporated under the laws of North Carolina and exercises the privilege of the continuance of its articles of incorporation. Whether or not the corporation has actually engaged in the business authorized by its charter or certificate of incorporation is immaterial. (Opinion of the Attorney General, CCH NORTH CAROLINA TAX REPORTS ¶ 200-703)

When real property which was not subject to taxation on January 1 is acquired by a non-exempt purchaser after January 1 and before July 1, the purchaser must list it for taxation and taxes must be assessed for the full year against the property. Where such real property is acquired after July 1, no taxes are due for the year in which the property was acquired. (Opinion of the Attorney General, CCH NORTH CAROLINA TAX REPORTS ¶ 200-698)

A foreign corporation leasing cars to a corporation doing business in North Carolina is not required to qualify to do business in this state. The lessor may register the automobiles in its own name and pay ad valorem taxes in its own name even though an out-of-state address would appear on the registration and tax returns. (Opinion of the Attorney General, CCH NORTH CAROLINA TAX REPORTS ¶ 200-738)

some important matters

For February and March

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the Source due on or before March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

Alaska — Annual Report due between January 1 and March 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Arizona — Returns of Information at the Source due on or before February 16.—Domestic and Foreign Corporations.

Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining.

Arkansas — Franchise Tax Report due on or before April 1.—Domestic and Foreign Corporations.

California — Returns of Information at the Source due on or before February 28.—Domestic and Foreign Corporations.

Returns of Tax Withheld at the Source due on or before March 15.—Domestic and Foreign Corporations.

Franchise (Income) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Colorado — Returns of Information at the Source due on or before March 15.—Domestic and Foreign Corporations.

Connecticut — Annual Report due on or before March 1.—Domestic and Foreign Corporations.

Income (Franchise) Tax Return and Payment due on or before April 1.—Domestic and Foreign Corporations.

Delaware — Tentative or Estimated Corporation Income Tax Returns and Payments due on or before April 1.—Domestic and Foreign Corporations deriving income from business activities carried on in Delaware and from property located in Delaware.

Final Corporation Income Tax Returns and Payments due on or before April 1.—Domestic and Foreign Corporations deriving income from business activities carried on in Delaware and from property located in Delaware.

District of Columbia — Returns of Information at the Source due on or before February 28.—Domestic and Foreign Corporations.

Dominion of Canada — Returns of Information at the Source due on or before the last day of February.—Domestic and Foreign Corporations.

Georgia — Report of Resident Stockholders and Bondholders due on or before March 1.—Domestic and Foreign Corporations.

Idaho — Returns of Information at the Source due on or before March 15.—Domestic and Foreign Corporations.

Illinois — Annual Report due between January 15 and the last day of February. —Domestic and Foreign Corporations.

Kansas — Returns of Information at the Source due on or before March 1.—Domestic and Foreign Corporations.

Annual Report and Franchise Tax due on or before March 31.—Domestic and Foreign Corporations.

Kentucky — Returns of Information at the Source due on or before March 15. —Domestic and Foreign Corporations.

List of Resident Stockholders and Bondholders due on or before February 15.—Domestic and Foreign Corporations.

Louisiana — Returns of Information at the Source due on or before February 15.—Domestic and Foreign Corporations.

Capital Stock Statement due before March 1.—Foreign Corporations.

Maine — Annual License Fee due on or before March 1.—Foreign Corporations.

Massachusetts — Excise Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Minnesota — Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

Mississippi — Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Missouri — Returns of Information at the Source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

Montana — Annual Report of Capital Employed due on or before March 1.—Foreign Corporations qualified after February 27, 1915.

Corporation License (Income) Tax Return due on or before March 31.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

Nebraska — Statement to Tax Commissioner due on or before March 1.—Foreign Corporations.

Nevada — Annual Statement of Business due not later than the month of March.—Foreign Corporations.

New Hampshire — Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due on or before April 1.—Domestic Corporations.

New Mexico — Annual Report due on or before March 15.—Domestic and Foreign Corporations.

Returns of Information at the Source due on or before April 1.—Domestic and Foreign Corporations.

New York — Returns of Information at the Source due on or before February 28.—Domestic and Foreign Corporations.

Annual Franchise Tax Report and Tax of Real Estate Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate Corporations.

North Carolina — Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

North Dakota — Annual Report due on or before April 1.—Foreign Corporations.

Ohio — Annual Franchise Tax Report and Franchise Tax due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

Oklahoma — Returns of Information at the Source due on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Oregon — Returns of Information at the Source due on or before February 15.—Domestic and Foreign Corporations.

Annual Summary of Taxes Withheld at the Source due on or before February 16.—Domestic and Foreign Corporations.

Rhode Island — Annual Report due during February.—Domestic and Foreign Corporations.

South Carolina — Annual License Tax Report and Tax due on or before March 31.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the Source due on or before March 15.—Domestic and Foreign Corporations.

South Dakota — Annual Capital Stock Report due before March 1.—Foreign Corporations.

Texas — Annual Franchise Tax Report due between January 1 and March 15. —Domestic and Foreign Corporations.

United States — Returns of Information at the Source due on or before February 28.—Domestic and Foreign Corporations.

Income Tax Return and one-half of balance of tax due on or before March 15.—Domestic and Foreign Corporations having an office or place of business in the United States.

Vermont — Returns of Information at the Source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due before March 1.—Domestic Corporations.

Extension of Certificate of Authority due before April 1.—Foreign Corporations.

Virginia — Returns of Information at the Source due on or before February 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due March 1.—Domestic Corporations.

Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due between January 1 and March 1.—Domestic and Foreign Corporations.

Wisconsin — Income Tax Returns and Returns of Information at the Source due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and March 31.—Domestic and Foreign Corporations.

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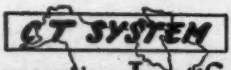

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